



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 26, 1993

Ms. Susan G. Spinks  
Assistant University Counsel  
University of Houston System  
1600 Smith, Suite 3400  
Houston, Texas 77002

OR93-265

Dear Ms. Spinks:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 19584.

The University of Houston (the "university") has received a request for information relating to the university's efforts to hire an athletic director. Specifically, the requestor seeks "[a]ll names, background checks, notes and records associated with the search for the University of Houston's athletic director to replace Rudy Davalos." You advise us that the names and resumes of most of the applicants as well as other information concerning the job description and the makeup of the athletic director search committee will be made available to the requestor. You claim, however, that the remaining information is excepted from required public disclosure by section 3(a)(1) of the Open Records Act (the "act") in conjunction with privacy doctrine and section 3(a)(11).

Information may be withheld from required public disclosure under common-law privacy if it meets the criteria articulated for section 3(a)(1) of the act by the Texas Supreme Court in *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Under the *Industrial Foundation* case, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public. The test for constitutional privacy, as incorporated into section 3(a)(1), involves a balancing of the individual's privacy interests against the public's need to know information of public concern. *Id.* The constitutional right of privacy protects information relating to marriage, procreation, contraception, family relationships, and child rearing and education. Open Records Decision No. 447 (1986) at 4.

You advise us that some of the applicants requested that their applications be kept confidential. You claim that release of these applications "could affect a privacy or property interest of a third party." In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546, 551 (Tex. App.--Austin, 1983, writ ref'd n.r.e.), the court held that public

disclosure of the names and qualifications of candidates for president of Texas A&M University would not constitute an invasion of privacy. This office has reached a similar conclusion with regard to applicants for other types of government employment; the public has a strong interest in the names and qualifications of such applicants. See Open Records Decision Nos. 470, 467, 455 (1987). We therefore conclude that the applications of those applicants who requested confidentiality may not be withheld from required public disclosure under section 3(a)(1) of the act.<sup>1</sup>

You also claim that release of the signed ballots indicating the candidate preferences of the members of the university's search committee "is an invasion of the privacy rights of the committee members who voted in confidence." We disagree. On numerous occasions, this office has held that a public employee's job performance does not constitute his private affairs. See Open Records Decision No. 470 at 4. Public officials and employees have a minimal expectation of privacy with respect to their actions as public employees. See Open Records Decision Nos. 506 (1988); 212 (1978). The members of the search committee were acting on behalf of the university when they conducted their search. On the basis of prior rulings of this office, and as you have not demonstrated that the signed ballots contain intimate or embarrassing private information, we conclude that the signed ballots may not be withheld from required public disclosure under section 3(a)(1) of the act.

You also claim that the meeting minutes and various letters and memorandums submitted to us for review constitute "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency" under section 3(a)(11) of the act and, therefore, are excepted from public disclosure.

For several months now, the effect of the section 3(a)(11) exception has been the focus of litigation. In *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 413 (Tex. App.--Austin 1992, writ ref'd), the Third Court of Appeals recently held that section 3(a)(11) "exempts those documents, and only those documents, normally privileged in the civil discovery context." The court has since denied a motion for rehearing in this case.

We are currently reviewing the status of the section 3(a)(11) exception in light of the *Gilbreath* decision. In the meantime, we are returning your request to you and asking that you once again review the information and your initial decision to seek closure of this information. We remind you that it is within the discretion of governmental bodies to release information that may be covered by section 3(a)(11). If, as a result of your review, you still desire to seek closure of the information, you must re-submit your request and the documents at issue, along with your arguments for withholding the information pursuant to section 3(a)(11). You must submit these materials within 14 days of the date of this letter. This office will then review your request in accordance with the *Gilbreath* decision.

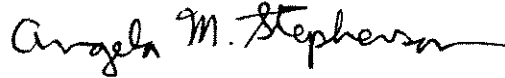
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<sup>1</sup>We note that information is not confidential under the act simply because the party submitting it anticipates or requests that it be kept confidential. See Open Records Decision No. 479 (1987).

If you do not timely resubmit the request, we will presume that you have released this information. The information for which you do not seek section 3(a)(11) protection, however, must be released promptly.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Angela M. Stepherson  
Assistant Attorney General  
Opinion Committee

AMS/GCK/le

Ref.: ID# 19584

Enclosures: Submitted documents

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(w/o enclosures)